IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 844 OF 2006

IN

APPEAL FROM ORDER NO. 634 OF 2006

Javed Akhtar Mirza & Anr. .. Applicants

versus

Mrs.Betsheba Kevin Gonsalves .. Respondent

...

Mr.G.V. Pandya for the applicants.

Ms,E.A. Gonsalves for the respondent.

CORAM : D.G. KARNIK, J

DATED : 24th November 2006

P.C.:

1. This application is filed by the applicant for injunction restraining the respondent from alienating the suit property during pendency of the appeal. Learned counsel for the respondent submitted that the suit agreement is a development agreement and therefore the

specific performance cannot be granted. he further submitted that as specific performance cannot be granted there should be no order of injunction.

2. I have perused the agreement. Clause no.32 of the agreement provides that the respondent shall execute a deed of sale in the name of developer or their nominee including the co-operative society. Therefore the present agreement appears to be not a development agreement but the development agreement coupled with the agreement of sale. In any event, this is a point which required consideration. The appeal has already been admitted. In the circumstances,, it would be proper to preserve the property against alienation. Hence, civil application is allowed in terms of prayer clauses (a) and (b).

(D.G. KARNIK, J)